



Lessons in Lawfare: Revisiting the South China Sea Ruling Five Years on

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Abstract

In 2012, Manila and Beijing had a standoff over the Scarborough Shoal in the South China Sea, which the former lost to the latter in result. As a smaller power allied with the global hegemon, the Philippines opted for international arbitration pursuant to UNCLOS. A tribunal set under the Permanent Court of Arbitration ruled overwhelmingly in the Philippines’ favor in 2016. But little has changed in real terms since then. This paper explores the viewpoints and strategies of three main players: the Philippines, which preferred multilateralism and international law but changed hearts with the ascend of Duterte; China, which is cognizant of its stature in the world, makes realistic moves, and stresses on bilateral talks; and the United States, which is concerned with its strategic interests but must assure allies and contain the rising challenger. In the last part, the paper further details how this case and its aftermath has emboldened China, delivered a blow to the already struggling international law, diminished the multilateralist and liberal approaches, and provided new lessons and strategies to smaller states which find themselves surrounded by the global power competition, and shed light on American double standards, yet again. It remains unlikely that such sovereignty-sensitive issues would be resolved by international law and courts in this era.

Outline

- Introduction
- Background
- The Three Players
 - The Philippines
 - China
 - The United States
- Implications
 - China Grows to be a First-Class Power
 - The Fate of International Law
 - Bilateral and Multilateral Tracks
 - Duterte Plays the Grand Strategy
 - American Double Standards

The Philippines

- Two Nationalisms
- Aquino III: Multilateral Approach
 - Lost the Scarborough Shoal
 - Lawfare the best strategy
- Duterte: Bilateral
 - A piece of paper with four corners
 - Plays great powers against each other to gain maximum benefit

The U.S.

President Trump remarked in the United Nations, right in front of world leaders, **“We will never surrender America’s sovereignty to an unelected, unaccountable global bureaucracy.”** Wasn’t the PH-China arbitral tribunal constituted under UNCLOS an unelected and unaccountable body?

The Scarborough Shoal



China

- No longer willing to succumb to foreign interference;
- Century of Humiliation;
- Refused to participate
- Island building



International law

- Powerful against the powerless, and powerless against the powerful
- 1984 *Nicaragua v. US*
- 2013 *Netherlands v. Russia*
- 2015 *Mauritius v United Kingdom* (Chagos Marine Protected Area)
- 2016 *Philippines v. China*

Conclusion

On the surface, Manila had won. But victory on paper does not qualify as real victory. The award did not change the situation in the South China Sea. The ruling is unlikely to solve the Sino-Philippine issue; any other ruling that will follow in this area between any parties will not achieve much, except for maybe exacerbating the situation further. The Philippines’ lawfare against China brings many insights into the new age politics. Manila preferred internationalizing the issue and trusted the law with it but had little luck; China asserted itself like other great powers realizing its strength and kept its emphasis on bilateral talks; and the United States endorsed UNCLOS without signing it, and the ruling without respecting rulings against itself to try to scotch China’s ascension to supremacy. The events that followed the ruling confirmed China’s heightened stature, depreciated the depreciating importance of international law, reinforced bilateral approaches, demonstrated how small powers can manipulate the great power game, and shed light on American double standards.